

The sale of canned software to Illinois users is considered to be the taxable sale of tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See 86 Ill. Adm. Code 130.1935. (This is a GIL).

December 6, 2000

Dear Xxxxx:

This letter is in response to your letter dated August 23, 2000. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing to inquire as to whether or not an item is taxable in your state if it is a weekly information update that is transferred to the customer off of the internet through FTP (File Transfer Protocol). This information is accessed via the COMPANY FTP Directory, with a user name and password. The customer is then able to download this information, and save it on hard drive or disk. Not all customers can utilize this service due to their limited resources, software issues, system formats or lack of Internet Service Provider (ISP). We have been taxing the FTP customers, and have heard mixed responses from them about whether or not sales tax is applicable in this case.

Please write your response below in the space provided and return to me in the postage paid envelope as soon as possible.

Thank you very much for your assistance in this matter.

We are unable to provide a response in the format you requested. We have set out some general information below that should assist you in answering your question.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased anywhere at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). These taxes comprise what is commonly known as "sales" tax in Illinois.

Your letter indicates that "a weekly information update" is downloaded electronically to your customers. Based upon the limited description in your letter, we cannot determine if this weekly information update is merely downloaded information or is a form of computer software update.

If the electronically delivered information update is not computer software, but is merely an informational database or directory of information, then the sale of such electronically delivered information is not considered a sale of tangible personal property and is not subject to Retailers' Occupation Tax or Use Tax liability.

However, Illinois law imposes Retailers' Occupation Tax (sales tax) upon persons who sell computer software at retail. Computer software means a set of statements, data, or instructions to be used directly or indirectly in a computer in order to bring about a certain result in any form in which those statements, data, or instructions may be embodied, transmitted, or fixed, by any method now known or hereafter developed, regardless of whether the statements, data, or instructions are capable of being perceived by or communicated to humans, and includes prewritten or canned software that is held for repeated sale or lease, and all associated documentation and materials, if any, whether contained on magnetic tapes, discs, cards, or other devices or media. 35 ILCS 120/2-25 (1998 State Bar Edition).

The sale of canned software to Illinois users is considered to be the taxable sale of tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See subsection (a) of the enclosed copy of 86 Ill. Adm. Code 130.1935. Tax applies to the entire charge made to the customer, including charges for all associated documentation and materials. Charges for updates of canned software are considered to be sales of software. Charges for training, telephone assistance, installation and consultation are exempt if they are separately stated from the selling price of canned software. Please see subsection (b) of Section 130.1935.

The regulation that governs sales of computer software distinguishes between taxable canned software and exempt custom software, and also covers how certain software licenses may not be taxable. Generally speaking, a computer program prepared to the special order of a customer to meet the customer's special needs is custom software. See subsection (c) of Section 130.1935. This usually involves preparation of the program for the customer's use by analysis of the customer's requirements by the vendor and adaptation of the program by the vendor so it can be used in the customer's specific work environment. This may occur when a software database is created based upon the specific requirements of a particular customer. However, if a database is created and marketed to the general public it would be taxable software assuming no other exemption applies.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.